

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:12-cr-40026-WGY

4
5 UNITED STATES OF AMERICA

6
7 vs.

8
9 JOHN J. O'BRIEN, et al

10
11 *****

12
13 For Jury Trial Before:
14 Judge William G. Young

15 **EXCERPT TRANSCRIPT:**
16 Testimony of Judge Bertha Josephson

17 United States District Court
18 District of Massachusetts (Boston)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 Friday, June 13, 2014

22 *****

23 REPORTER: RICHARD H. ROMANOW, RPR
24 Official Court Reporter
25 United States District Court
One Courthouse Way, Room 5510, Boston, MA 02210
bulldog@richromanow.com

A P P E A R A N C E S

FRED M. WYSHAK, JR., ESQ.

KARIN M. BELL, ESQ.

ROBERT A. FISHER, ESQ.

United States Attorney's Office
J. Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(617) 748-3954
Email: Fred.wyshak@usdoj.gov
For the United States

STYLIANUS SINNIS, ESQ.

WILLIAM W. FICK, ESQ.

CHRISTINE DeMASO, ESQ.

Federal Public Defender Office
District of Massachusetts
51 Sleeper Street, 5th Floor
Boston, Massachusetts 02210
Email: stellio_sinnis@fd.org
For John J. O'Brien

JEFFREY A. DENNER, ESQ.

R. BRADFORD BAILEY, ESQ.

ADAMO LANZA, ESQ.

Denner Pellegrino, LLP
Four Longfellow Place, Suite 3501
Boston, Massachusetts 02114
Email: Jdenner@dennerpellegrino.com
For Elizabeth V. Tavares

JOHN A. AMABILE, ESQ.

JAMES C. BRADBURY, ESQ.

Amabile & Burkly, P.C.
380 Pleasant Street
Brockton, Massachusetts 02401
Email: John.amabile@amabileburkly.com
For William H. Burke, III

1 P R O C E E D I N G S

2 (**EXCERPT** begins.)

3 MR. FISHER: Your Honor, the government calls
4 Bertha Josephson.

5 THE COURT: She may be called.

6 (JUDGE BERTHA JOSEPHSON, sworn.)

7 THE CLERK: Would you please state your name
8 and spell your last name for the record.

9 THE WITNESS: My name is Bertha Josephson. My
10 last name is spelled J-O-S-E-P-H-S-O-N.

11 MR. FISHER: Your Honor, before I proceed, is
12 there any way we can get -- this screen isn't working
13 again.

14 THE COURT: I understand that. That's what I
15 said. We've sent -- the problem is that's the screen
16 that you're forced to use and you can't tell whether
17 things are up here or not.

18 Now, we've sent to get people to repair that.

19 MR. FISHER: That's all I'm trying to do. The
20 only thing I want to do is clear the green arrows. And
21 I know my screen isn't working.

22 THE COURT: You may come up here and do it.

23 MR. FISHER: Sure. Is that clear?

24 (Clears arrows from witness's screen.)

25 MR. FISHER: Thank you. That's all I wanted

1 to do.

2 THE COURT: That's all right.

3

4 *****

5 JUDGE BERTHA JOSEPHSON

6 *****

7

8 DIRECT EXAMINATION BY MR. FISHER:

9 Q. Good morning, Judge Josephson. Well, you've already
10 stated your name.

11 Can you tell the jurors a little bit about
12 yourself, what your educational background is?

13 A. I graduated Skidmore College in 1975, Western New
14 England College, now "University," law school in 1978
15 with a JD. I was admitted to the bar in Massachusetts
16 in 1978 and, um, practiced as an attorney in a private
17 firm in Springfield from 1978 until 19 -- I think '81,
18 and then joined the Smith school -- excuse me, the Smith
19 College School for Social Work on a National Institute
20 of Correction's funded project to investigate the legal
21 issues and resources of women inmates in the Northeast.
22 I finished that and then worked in private practice.
23 And then in, I believe, '83, I joined the Northwestern
24 District Attorney's Office as an Assistant District
25 Attorney. In 1990, I became an Assistant U.S. Attorney

1 for the District of Massachusetts. In 1992, I was
2 appointed by Governor Weld to the Chicopee District
3 Court as an Associate Justice. And then in 1994, I was
4 appointed to the Superior Court as a Justice in
5 Massachusetts.

6 Q. And you're still serving as a justice in that court
7 today?

8 A. I am.

9 MR. FISHER: May I have Exhibit 18.05.

10 (On screen.)

11 Q. Judge Josephson, I'm putting up an exhibit, marked
12 already in evidence here, 18.05. I'd like to draw your
13 attention to that panel you sat on.

14 Can you tell the jurors what panel that was you
15 sat on and what the purpose of you being there was for?

16 A. That was a panel to interview for the, um, associate
17 chief, I think it was, probation officer for the
18 Franklin Superior Court.

19 Q. And do you remember who you sat on that panel with?

20 A. Yes.

21 Q. And could you tell the jurors with who?

22 A. With Bill Burke and Frank Siano.

23 Q. And did you know Mr. Siano before that day?

24 A. Yes.

25 Q. And who was Mr. Siano?

1 A. Mr. Siano was the Chief Probation Officer of
2 Franklin County Superior.

3 Q. And how about Mr. Burke, did you know Mr. Burke
4 before that day?

5 A. Yes, I did.

6 Q. And who did you know Mr. Burke to be?

7 A. He was, I think at that time the Western -- I might
8 not have the right title down, but he was in charge of
9 the Western, Massachusetts probation office.

10 Q. And you knew these two gentlemen on a professional
11 basis, correct?

12 A. I did.

13 Q. And showing you -- if you take a look at Exhibit
14 18.05.

15 A. (Looks.)

16 Q. What do you recognize that exhibit to be?

17 A. That was the final ranking of the candidates whom we
18 interviewed.

19 Q. And is that your signature there?

20 A. Yes.

21 Q. The second signature?

22 A. Right.

23 Q. And is that -- you signed that January 12th of 2006,
24 is that fair to say?

25 A. Right, I did.

1 Q. Now, did you also, that day, fill out your own
2 grading sheet?

3 A. Yes, I did.

4 Q. And do you know if the other interviewers,
5 Mr. Siano, Mr. Burke, had their own ranking sheet for
6 the interview?

7 A. I believe they did.

8 Q. What did you do with your ranking sheet after the
9 interview?

10 A. Well, I turned in notes that, um, that I had taken
11 and, um, that's what I'm referring to, I think, as a
12 ranking sheet. I don't -- I think I had a separate
13 sheet, but I don't know what happened with that. If it
14 was a separate sheet, um, where we actually put in
15 numbers for each candidate? I can't recall. But there
16 was, um, a sheet with remarks that was turned in.

17 THE COURT: Just so I can follow. The
18 position you're interviewing for, tell us again?

19 THE WITNESS: Is the associate chief, I
20 believe, of a probation officer for Franklin County.

21 THE COURT: In what court?

22 THE WITNESS: Oh, in the Superior Court. I'm
23 sorry.

24 THE COURT: Thank you.

25 Q. And in the sheet in front of you, that ranking

1 sheet, who compiled that, whose writing? I know your
2 signature is on there, but do you remember who actually
3 compiled that list that's on the screen?

4 A. Yes, Mr. Burke.

5 Q. And how do you know that?

6 A. He wrote it out and we signed it.

7 Q. Now, could you tell the jury what this list is,
8 which comprises 18.05?

9 A. It's the ranking of the final candidates or ranking
10 of the top 6 candidates who we interviewed.

11 Q. Now, were there more than 6 candidates you
12 interviewed?

13 A. Yes.

14 Q. Do you remember how many extra candidates there
15 were?

16 A. I'm not sure. I think there may have been 9.

17 Q. So some people did not get passed on to the final
18 round?

19 A. That's right.

20 Q. Now, in terms of this list, there's no numbers
21 written there, so could you tell the jurors who was
22 Number 1 and who was Number 6?

23 A. They were ranked -- they were listed according to
24 how we ranked them, so, um, Mike Gralinsky and Sheila
25 Dintaman were tied for first, and then Bob Brown, Sheila

1 Moriarty, Frank Glenowicz, and Sean McDonald.

2 Q. Do you -- after you -- well, when you signed this,
3 did you agree with the ranking of the candidates?

4 A. Yes.

5 Q. Is this in fact how you had the candidates ranked?

6 A. No, this is how I think the candidates ended up
7 being ranked based on what each of the three of us had
8 determined.

9 Q. In terms of how you had ranked the candidates who --
10 You interviewed these candidates, correct?

11 A. Yes.

12 Q. And you were able to look at their applications and
13 resumes?

14 A. Right.

15 Q. And did you know any of them before the interview,
16 had you worked with any of them?

17 A. Yes, I had.

18 Q. And so what did you base your ranking on?

19 A. Well, the interview, the, um, documents that were
20 submitted in support of their application, um, along
21 with -- of course that was part of the application, um,
22 and, um, what I knew of them, my professional connection
23 with any of them.

24 Q. You had worked with them professionally?

25 A. Correct.

1 Q. Now, the person getting that job would be working in
2 your court, correct?

3 A. That's right.

4 Q. So did you also consider the needs of the court?

5 A. Oh, sure.

6 Q. Would you tell the jurors who you felt were the most
7 qualified candidates for that position?

8 A. Um, Sheila Dintaman, um, and Mike Gralinsky.

9 Q. So therefore do you agree with -- do you agree with
10 them being tied for the Number 1 slot?

11 A. Yeah, I think that's fair.

12 Q. And why is it that you felt that they were the most
13 qualified for that position?

14 A. Well, um, based on the applications that they had
15 submitted, based on their interviews, and based on what
16 I knew of what was needed in that court, I felt that
17 they were the top candidates. I had worked with Sheila
18 Dintaman when I was an Assistant D.A. She had been a
19 probation officer in the District Court. I knew her
20 work. I knew her work ethic. And she was a very, very
21 good probation officer. And her application, I thought,
22 proved that out, it was thorough and detailed.

23 Mike Gralinsky, if you want me to go on?

24 Q. Sure, I was going to ask you about Mr. Gralinsky.

25 A. Okay. Mike Gralinsky had been in the Franklin

1 Superior Court probation office and I had worked with
2 him as a probation officer, as him being a probation
3 officer, and, um, he also was a good probation officer.
4 Both of them, because of being in Franklin County and
5 having been probation officers in Franklin County for so
6 long, really knew the community, knew the population
7 they were working with, knew the services that were
8 available to be able to provide to our probationers. So
9 those were some considerations.

10 Q. Now, at least according to the exhibit we have up
11 before you, 18.05, is it fair to say Mr. Glenowicz was
12 ranked Number 5 on that list?

13 A. Yes.

14 Q. Now, do you agree with that ranking of
15 Mr. Glenowicz?

16 A. Yes.

17 Q. And can you tell the jury why you agree with
18 Mr. Glenowicz being ranked Number 5 on that list?

19 A. My memory of Mr. Glenowicz at that time was that he
20 was coming from the juvenile probation office in Hampden
21 County and I -- from the interview and from his
22 qualifications, did not feel he had a good grasp on what
23 the job in Franklin Superior would entail and the
24 resources and the community and the population that he
25 would be working with. He had worked with juveniles and

1 we were dealing with the criminals who were -- for lack
2 of a better word, had "graduated" into Superior Court,
3 serious charges and crimes.

4 Q. And just so the jury understands here, if they don't
5 already, but is Superior Court the highest you can go in
6 terms of a criminal court in Massachusetts?

7 A. It's the -- yeah, it's the, um -- there are two
8 levels of trial court, um, criminal trial and civil
9 trial court in Massachusetts, District Court and then
10 the higher level is the Superior Court for major
11 felonies.

12 Q. Now, subsequent to these interviews in this ranking
13 sheet, did you learn who received the assistant chief
14 probation officer job in your court?

15 A. Yes.

16 Q. And who did receive that position?

17 A. Mr. Glenowicz.

18 Q. And how did you learn that Mr. Glenowicz received
19 that promotion?

20 A. I can't recall how I learned of it.

21 Q. But fair to say you did learn of it?

22 A. I did.

23 Q. And when you learned that, what was your reaction to
24 that?

25 A. I was upset.

1 Q. Would you tell the jury why you were upset?

2 MR. AMABILE: Objection.

3 THE COURT: Yeah, she was upset. Let's see
4 what she did, if anything.

5 Q. What did you do in response to being upset and
6 learning that he got that promotion, if anything?

7 A. I don't know if, um, Mr. Siano, if I called him or
8 he called me, but I spoke with Mr. Siano at some point
9 in this and said, "How" --

10 MR. AMABILE: Objection.

11 THE COURT: Wait a minute.

12 MR. AMABILE: I object, your Honor.

13 THE COURT: No, I understand. Give me a
14 second here.

15 (Pause.)

16 THE COURT: Come to the sidebar.

17

18 AT THE SIDEBAR

19 THE COURT: Okay. And what's the conversation
20 going to be?

21 MR. FISHER: Mr. Siano is the chief probation
22 officer. She called him, "I'm upset, how did that
23 happen?" He tells her he learned of it too and he's
24 also upset. And just for the Court's knowledge, he's
25 going to be my next witness. And then I'm going to ask

1 her, "Well, what did you in response to that, the
2 conversation with Mr. Siano?" And I believe her
3 testimony will be, "I called Mr. Burke to find out how
4 this happened and had a conversation with Mr. Burke
5 about how this happened." That's my understanding.

6 THE COURT: Well, you say Siano is a
7 conspirator. Um, I am not in a position yet to make
8 that determination especially given the answer that he
9 gives her. Of course she's the judge and he has to work
10 with her.

11 But how are you going to get it in against an
12 objection?

13 MR. FISHER: Well, I think it informs -- it
14 informs the jury as to why she then takes an action.

15 THE COURT: Well, of course the unusual way of
16 doing this is so we call up Siano, "Now, as a result of
17 that phone conversation, what did you do?" "I called up
18 Burke." Let's do it that way.

19 MR. FISHER: Okay.

20

21 (In open court.)

22 Q. So you -- who is Mr. Siano again?

23 A. Mr. Siano was the chief probation officer for
24 Franklin County Superior.

25 Q. And he worked in that court with you, correct?

1 A. Yes, he did.

2 Q. So the assistant chief position, that was going to
3 be working under him?

4 A. Correct.

5 Q. And you had a conversation with him after you
6 learned of the promotion, correct?

7 A. I think I did.

8 Q. After the conversation with Mr. Siano, what do you
9 do now?

10 MR. AMABILE: Your Honor, I object, because
11 she's not saying she actually did anything.

12 THE COURT: Overruled. Well, she said -- it's
13 sufficient. The question now, "After that conversation,
14 what did you do?"

15 A. I called Mr. Burke.

16 Q. And via the telephone?

17 A. Yes.

18 Q. And did you have a conversation with him?

19 A. Yes.

20 Q. And can you tell the jurors what you said and what
21 he said to you?

22 A. I expressed my dismay that the -- that one of the
23 lowest-ranking candidates, Mr. Glenowicz, had been
24 selected and I questioned how that could have happened?
25 And, um, Mr. Burke said, um, something to the effect of,

1 "Well, that's somebody else's decision and that's just
2 the way it goes." And so then I said, "Well, don't ever
3 ask me to be on another one of these panels."

4 Q. Did you -- after you spoke to Mr. Burke, did you
5 speak to anyone else either at the Commissioner's
6 office, the Commissioner of Probation, or at AOTC,
7 regarding Mr. Glenowicz?

8 A. I saw Nick DeAngelis who also was an administrator
9 in the probation office in Western, Massachusetts. I
10 didn't seek him out, I happened to see him shortly after
11 that, and also I said I did not want to be on any of
12 these panels anymore because of this one.

13 Q. And did -- well, what did Mr. DeAngelis say to you?

14 MR. AMABILE: Objection. He said he would --

15 THE COURT: Wait. Are you going to press that
16 or --

17 MR. FISHER: I'll withdraw it, your Honor.

18 THE COURT: You'll withdraw it. All right.

19 Q. After this, um, incident, did you sit on any more
20 interview panels for probation officers?

21 A. I don't think I did until very recently.

22 Q. And Mr. Glenowicz, he did become the assistant chief
23 in your court, correct?

24 A. Yes, he did.

25 Q. Was Mr. Glenowicz the most qualified candidate for

1 that position?

2 MR. AMABILE: I object. I object.

3 THE COURT: Overruled. She may give us her
4 view.

5 A. Not in my opinion.

6 Q. When you were sitting on this interview panel
7 interviewing Mr. Glenowicz and others with Mr. Burke,
8 did you know of any relationship between Mr. Burke and
9 Mr. Glenowicz?

10 MR. AMABILE: Objection.

11 THE COURT: Well, sustained on that
12 foundation.

13 Q. How long had you known Mr. Burke?

14 A. Oh, since I've been in the District Attorney's
15 Office in the '80s.

16 Q. And did you have any conversation with him regarding
17 Mr. Glenowicz prior to the interview?

18 MR. AMABILE: Objection.

19 THE COURT: A conversation with -- no,
20 overruled.

21 A. Prior to --

22 THE WITNESS: I'm sorry.

23 THE COURT: I assume you're asking about prior
24 to the interview, any conversations with Burke
25 concerning Glenowicz?

1 MR. FISHER: Concerning any relationship with
2 Mr. Glenowicz, correct.

3 THE COURT: All right. That's the question
4 and you may answer it.

5 THE WITNESS: Okay. Thank you.

6 A. Um, in the interview I think Mr. Burke said
7 something about knowing Mr. Glenowicz, but I don't have
8 a specific recollection of what that entailed. And
9 because we all knew one another, it was a fairly
10 informal conversation going on in between candidates and
11 during the interview process.

12 Q. So that that was the extent of your knowledge of the
13 relationship between Mr. Burke and Mr. Glenowicz, that
14 they knew each other?

15 A. To my best memory at this moment, yes.

16 (Pause.)

17 MR. FISHER: May I just have one moment, your
18 Honor, please?

19 THE COURT: You may.

20 (Pause.)

21 Q. Now, Judge Josephson, after this interview you said
22 you didn't sit on any more interview panels.

23 What was your response to the process of that
24 interview?

25 MR. AMABILE: Objection.

1 THE COURT: Sustained.

2 Q. Well, can you tell the jury why you didn't sit on
3 any other interview panels?

4 MR. AMABILE: Objection.

5 THE COURT: Sustained.

6 (Pause.)

7 MR. FISHER: No further questions, your Honor.

8 THE COURT: Mr. Amabile, any questions?

9 MR. AMABILE: Yes, your Honor. Thank you,
10 your Honor.

11

12 CROSS-EXAMINATION BY MR. AMABILE:

13 Q. Good morning, Judge Josephson, my name is John
14 Amabile and I represent Bill Burke.

15 A. Good morning.

16 Q. I think he -- you know him as "Billy Burke," is that
17 correct?

18 A. That's right.

19 Q. And you and I have never had the pleasure of meeting
20 before, is that correct, Judge Josephson?

21 A. No, we have not had that pleasure.

22 Q. Okay. But you were kind enough, however, to speak
23 to me on the telephone about this particular case, is
24 that correct?

25 A. I spoke to you on the telephone, yes.

1 Q. Now, Judge Josephson, you've known Billy Burke for
2 your entire legal career, is that correct?

3 A. Pretty much, yes.

4 Q. In other words, he was a probation officer for many
5 years before you received an appointment as an Assistant
6 District Attorney, is that correct?

7 A. Yes.

8 Q. And you were appointed by Mike Ryan, is that
9 correct?

10 A. I was.

11 Q. And he was the District Attorney in Hampshire County
12 -- and was it Hampshire and Franklin County?

13 A. Yes, it's actually called the Northwestern District
14 Attorney's Office.

15 Q. Okay.

16 A. Yes, it's both those towns.

17 Q. And you worked in that office for a period of time,
18 is that correct?

19 A. Yes.

20 Q. And you're aware of the fact that Mike Ryan then
21 went on to become a Justice of the North Hampton
22 District Court, is that correct?

23 A. Yes.

24 Q. And he rose to the position of Chief Justice in that
25 court, is that correct?

1 A. Um, he was a First Justice. I don't mean to quivel,
2 but there's -- he was the First Justice for Hampshire.

3 Q. Okay. And I don't mean to quivel either but --

4 A. North Hampton. I'm sorry, Mr. Amabile.

5 Q. Right. And I don't mean to quivel either, but the
6 position that you interviewed for that you're talking
7 about here wasn't the associate probation officer, it
8 was the assistant probation officer, is that correct?

9 A. Yes. If I said otherwise, I -- I think it was the
10 assistant chief.

11 Q. The assistant chief probation officer of the
12 Franklin County Superior Court, is that correct?

13 A. I think that's right.

14 Q. Okay. Now, you knew two of the candidates before
15 the interviews were conducted, is that correct?

16 A. I knew almost all of the candidates.

17 Q. Well, you didn't know Frank Glenowicz though, did
18 you?

19 A. No, I didn't.

20 Q. You had no dealings with him whatsoever before the
21 interview, is that correct?

22 A. Not that I know of.

23 Q. All right. Which other candidates did you know
24 other than Sheila Dintaman and Mr. Gralinsky?

25 A. I knew, um, Bob Brown. I think I had some dealings

1 with Sheila Moriarty, although I'm not positive, and
2 then some of the ones who didn't make it through, I
3 know.

4 Q. Okay. But you don't remember any of these names off
5 the top of your head?

6 A. Yeah, I do. One was Jason Harver.

7 Q. Okay.

8 A. And the other was Sean Hopkin or Houghton.

9 Q. Okay.

10 A. And the other was Loreen Masnick.

11 Q. Masineck? Was it Masnick or Masineck?

12 A. It's Masineck.

13 Q. All right. Well, so was Mr. Glenowicz the only one
14 you didn't know?

15 A. No, I didn't know -- you know, I don't think I knew
16 Sean McDonald, but I later learned that his father was
17 someone I knew. But I don't think I knew that at the
18 time.

19 Q. All right. And, um, Sheila Dintaman you knew from
20 when you were an Assistant District Attorney, is that
21 correct?

22 A. That's correct.

23 Q. And she was a probation officer in the Greenfield
24 District Court?

25 A. That's right.

1 Q. And she had held that position for many years, is
2 that correct?

3 A. That's correct.

4 Q. And in that capacity you became familiar with her,
5 is that correct?

6 A. That's right.

7 Q. And you had a professional relationship with her, is
8 that correct?

9 A. Yes.

10 Q. And you had a very friendly relationship with her,
11 is that correct?

12 A. Professionally, yes.

13 Q. And the fact of the matter is that on her
14 application for this position --

15 MR. AMABILE: The jurors are asking a
16 question. So we'll pause for one moment.

17 THE COURT: You go right ahead, Mr. Amabile.

18 Q. On this particular application she asked you to, um,
19 act as one of her references on her application, is that
20 correct?

21 A. She may have. I don't have a specific memory of
22 that, but it's certainly -- it's certainly possible.

23 Q. All right. Well, you don't remember that she had --
24 well, you reviewed the applications at the time the
25 interviews were conducted, is that correct?

1 A. Yes.

2 Q. And you don't remember that you were listed as one
3 of her references on the actual application?

4 A. I don't think I've seen the application in 14 years,
5 so I'm sorry. Oh, not 14, how long has it been?

6 Q. It was 2006, I think.

7 A. Yes.

8 Q. So that would be 8 years?

9 A. All right.

10 Q. Well, that's close enough. It's a long time ago.

11 A. That's what I'm talking about.

12 Q. Okay.

13 MR. AMABILE: May I approach the witness, your
14 Honor?

15 THE COURT: You may.

16 MR. AMABILE: I just want to redact something,
17 your Honor.

18 THE COURT: You go right ahead.

19 (Pause.)

20 THE COURT: And I don't know what he's doing,
21 but you've seen this before, no personal Social Security
22 numbers or financial information. No one's hiding
23 anything that could possibly be germane from you.

24 And go ahead, Mr. Amabile.

25 MR. AMABILE: And, your Honor, in fact I don't

1 want to be chastised by any of the jurors who are being
2 very attentive.

3 THE COURT: They certainly are.

4 Q. I'm going to show you a document and ask you if you
5 recognize it. It's a multi page document.

6 A. Uh-huh.

7 Q. Do you recognize that?

8 A. Sure.

9 Q. Okay. Would you tell the jury what that document
10 is?

11 A. This appears to be -- and I think in fact it is,
12 Sheila Dintaman's application for employment.

13 Q. For what?

14 A. Franklin Superior Court assistant chief probation
15 officer.

16 Q. And that would be the application for the position
17 which you sat on the panel for, is that correct?

18 A. That's true.

19 Q. And other than where I just crossed out the Social
20 Security number, is that a complete and accurate copy of
21 the application as far as you can recall?

22 A. (Looks.) I'm presuming it is. I don't have a
23 specific recollection of the application, but it looks
24 to be it.

25 MR. AMABILE: Can we have a stipulation or --

1 MR. FISHER: I'm just not sure what version
2 you have.

3 (Hands to counsel.)

4 THE COURT: While they're talking, when you
5 did these, how many people were interviewed for this
6 position?

7 THE WITNESS: I think 9.

8 THE COURT: 9. On your ranking, your personal
9 ranking, where did Mr. Glenowicz fit?

10 THE WITNESS: I don't remember on my personal
11 ranking. This is not dissimilar. But he was down at
12 the bottom. If he wasn't the last, he was then the
13 second to last.

14 THE COURT: Was he in the top 6?

15 THE WITNESS: Well, he was in the top -- you
16 know, I don't know. I don't know that.

17 THE COURT: Personally where you -- you don't
18 know whether, on your personal ranking, where he would
19 have been?

20 THE WITNESS: I don't.

21 THE COURT: You've got to move, one way or
22 another.

23 MR. AMABILE: I'm sorry, your Honor.

24 THE COURT: Okay. And you don't.

25 Go ahead, Mr. Amabile.

1 MR. AMABILE: Your Honor, I'd offer this?

2 THE COURT: Any objection, Mr. Fisher?

3 MR. FISHER: No objection, your Honor.

4 THE COURT: It may be received Exhibit 158 in
5 evidence.

6 (Exhibit 158, marked.)

7 Q. And having looked at that, if we go to the last
8 page, does that refresh your memory about whether or not
9 you were asked by Ms. Dintaman to act as a reference in
10 this particular job application?

11 A. I see I am listed.

12 Q. Okay. And does that refresh your memory that before
13 the interview you had a conversation with her where she
14 obtained your permission to list you as a reference on
15 this job application?

16 A. I don't know that it was before this interview or
17 before other interviews that she had asked, or at some
18 other point in the past, well before that, could she
19 list me as a reference, and I'm sure I said "Yes."

20 Q. So in other words there's no question in your mind
21 that prior to this interview you had had a conversation
22 with her, is that correct, Judge Josephson?

23 A. That's right.

24 Q. And she had obtained your permission to use her as a
25 reference in job applications for positions within the

1 trial court?

2 A. That's right.

3 Q. Okay.

4 MR. AMABILE: I'd ask to publish this to the
5 jury, your Honor?

6 THE COURT: You want it passed?

7 MR. AMABILE: Yes, your Honor.

8 THE COURT: The Clerk may pass it.

9 (Passes it to jury.)

10 THE COURT: Proceed.

11 Q. Judge Josephson, you said that familiarity with
12 Franklin County was one of the criteria you were looking
13 for in determining who was a suitable candidate, is that
14 correct?

15 A. Yes.

16 Q. Okay. Now, are you aware of the fact that Frank
17 Glenowicz has lived his entire life in Franklin County?

18 MR. FISHER: Objection.

19 THE COURT: Yeah, sustained on that
20 foundation.

21 Q. Well, did you review his application?

22 A. Yes.

23 Q. All right. And do you know where --

24 (Pause.)

25 MR. AMABILE: If I could have a moment, your

1 Honor?

2 THE COURT: You may.

3 (Pause.)

4 Q. And do you know where South Deerfield, Massachusetts
5 is?

6 A. Yes.

7 Q. And where is South Deerfield?

8 A. It's in Franklin County.

9 Q. And you're not aware of the fact that Frank
10 Glenowicz grew up in South Deerfield, Massachusetts?

11 MR. FISHER: Objection.

12 THE COURT: Well, um, we have the application.
13 You don't know Mr. Glenowicz at all?

14 THE WITNESS: I know him now.

15 THE COURT: But then, I'm sorry, and it was a
16 poor question.

17 So back then you didn't know where he was, where
18 he grew up, or what he had done beyond what you had on
19 the application?

20 THE WITNESS: That's right.

21 THE COURT: All right.

22 Q. Do you know where Conway, Massachusetts is?

23 A. Yes.

24 Q. Where is that?

25 A. Franklin County.

1 Q. And did you know that Frank Glenowicz, at the time
2 of this interview, lived in Conway, Massachusetts?

3 A. If it was on the application, I'm sure I must have
4 seen it. But I don't remember that.

5 Q. Okay.

6 MR. FISHER: I'll stipulate, your Honor.

7 MR. AMABILE: You'll stipulate, you said?

8 THE COURT: That he --

9 MR. AMABILE: That he lived in Conway at the
10 time that he --

11 THE COURT: That's stipulated and I've
12 explained what stipulations are. To save time they
13 agree to it. No dispute about that. You don't have to
14 take any time on it. But so powerful is your role here
15 that -- just like the testimony of a witness, you can
16 believe it even though -- because they all agreed to it.
17 But you don't have to believe it. You're the jury.

18 Go ahead. Stipulate.

19 MR. AMABILE: All right. And just because of
20 that, your Honor, I would also like to approach the
21 witness because there's -- they can object to the
22 stipulation, so I'd like to approach and show the
23 application.

24 THE COURT: Well, of course, you may.

25 MR. AMABILE: Thank you, your Honor.

1 (Shows to witness.)

2 Q. And does that refresh your recollection about where,
3 um -- and this would particularly be on the first page,
4 but where Frank Glenowicz resided at the time that he
5 conducted this interview?

6 A. That's what it says, it's Conway.

7 Q. He lived in Conway at the time?

8 A. That's what it says, yes.

9 Q. Okay.

10 Now, are you aware of his background at all? Did
11 you review the resume and the application?

12 A. I'm sure I did.

13 Q. Okay. And, um, are you aware of the fact that he,
14 from 1994 to 1997 --

15 MR. FISHER: Objection, your Honor, he's
16 reading from the document.

17 THE COURT: Yeah, is it in evidence?

18 MR. AMABILE: Well, I'd offer it in evidence,
19 your Honor.

20 THE COURT: Yeah, any objection?

21 MR. SINNIS: It's Exhibit 18, your Honor.

22 THE COURT: It's in evidence.

23 MR. AMABILE: It's already in evidence. I'm
24 sorry.

25 THE COURT: Right. Then he may inquire from

1 it.

2 MR. AMABILE: All right.

3 Q. Are you aware of the fact that, from 1994 to 1997,
4 Frank Glenowicz worked at the Department of Social
5 Services at an address, 1 Arch Place, Springfield,
6 Massachusetts?

7 A. I see that on the resume and I would have been aware
8 of it at the time.

9 Q. And that is in Franklin County, is that correct?

10 A. That is in Franklin County.

11 Q. So he worked as a social worker in Franklin County
12 for a period of three years before he obtained his job
13 as a probation officer? Is that fair?

14 A. That's what it says.

15 Q. All right. Now, how long a drive is it from
16 Greenfield to Springfield?

17 MR. FISHER: Objection, your Honor.

18 THE COURT: It -- well, she may be asked that.
19 How long is it?

20 THE WITNESS: It's about -- depends frankly
21 how fast you drive, but it's a straight shot down 91.
22 You can make it in 45 minutes or maybe 40 minutes.

23 Q. But you've had occasion to make that drive in 40
24 minutes, is that correct?

25 A. Um, yeah, I have.

1 (Laughter.)

2 Q. And, um -- okay. It's not that far away, in any
3 event, is that correct?

4 A. No.

5 Q. And Frank Glenowicz worked in Springfield as a
6 probation officer for nine years, is that correct?

7 A. Yes.

8 Q. Okay. So he was a 40-minute drive from where he
9 lived in Conway.

10 Well, was Conway closer or further away?

11 A. Further away. I'm sorry, from where?

12 Q. From Springfield.

13 A. It was further away from Springfield.

14 Q. All right. So, in other words, assuming he commuted
15 by car, he drove right by Greenfield every day on his
16 way from Conway to Springfield, is that correct?

17 A. Well, I'm sorry to say it isn't. The geography is a
18 little different.

19 Q. All right, why don't you explain. I don't want to
20 put any words in your mouth, Judge Josephson, I want you
21 to give the testimony as accurately as you can.

22 A. Well, Greenfield is directly north of Springfield,
23 Conway is over to the West of Greenfield and slightly
24 South of Greenfield, but it -- believe me, you have to
25 go on Route 112, you have to do a lot of things that

1 take a fair amount of time. So it's really -- although
2 you go by Conway, it's a distance from the highway.

3 Q. Okay. Now, I think you also testified that the
4 Superior Court handles major felony cases, is that
5 correct?

6 A. That's correct.

7 MR. AMABILE: Your Honor, I'd ask to publish
8 the application, if I may?

9 THE COURT: The Clerk may pass it.

10 I'm going to go a little longer, but we're only
11 going to take a 15-minute recess because we're going to
12 stop at quarter to 1:00 to accommodate a juror. If that
13 makes anyone uncomfortable, just raise your hand, we can
14 take the recess at any time.

15 Go ahead, Mr. Amabile.

16 Q. I think you testified that the Superior Court is
17 involved in the most serious types of cases, is that
18 correct?

19 A. It is.

20 Q. Um, major felonies in the criminal side, is that
21 correct?

22 A. That's right.

23 Q. And that's where, um -- those are the types of cases
24 that the probation officers are involved in in the
25 Superior Court, is that correct?

1 A. That's correct.

2 Q. Okay. Now, Mr. Gralinsky had worked in the Superior
3 Court --

4 A. Yes.

5 Q. -- for about the same length of time that Glenowicz
6 had been in the juvenile court, is that correct?

7 A. I don't know that.

8 Q. You don't remember?

9 A. No.

10 Q. Gralinsky was not your Number 1 choice, is that
11 correct?

12 A. I'm sorry?

13 Q. Mr. Gralinsky was not your Number 1 choice, correct?

14 A. I don't know. I know that our final ranking, from
15 the three of us, ended up this way. Whether
16 Mr. Gralinsky was ahead of Ms. Dintaman or not, I don't
17 know, but my top two certainly were Ms. Dintaman and
18 Mr. Gralinsky.

19 THE COURT: Let me interject with a juror
20 question.

21 The composite rank -- you were shown that
22 handwritten sheet that had the six people, the top two
23 and the like, and you signed that?

24 THE WITNESS: Yes.

25 THE COURT: How did that piece of paper come

1 into being?

2 THE WITNESS: My best memory of that is that
3 we did our individual rankings and then from that this
4 was generated as, um, where they fell based on prior
5 rankings, and I think, if I remember correctly, that is
6 why Mr. Gralinsky and Sheila Dintaman ended up in a tie
7 was that we had, um --

8 Q. Well, you ranked them --

9 THE COURT: Wait a minute. Let me just finish
10 with the juror question.

11 MR. AMABILE: I'm sorry.

12 THE COURT: Who put them together?

13 THE WITNESS: At the time?

14 THE COURT: No, who created that piece of
15 paper, wrote the names on it and made the entries?

16 THE WITNESS: I think Mr. Burke did.

17 THE COURT: And where was he? I mean how was
18 it done?

19 THE WITNESS: Oh, okay. We were all in a room
20 and my memory of it is that it was after we had done our
21 rankings, Mr. Burke put this together based on how we
22 had ranked the candidates and said, "This is how they
23 fall," and it appeared to be that was how they fell
24 based on our individual rankings and that was then how
25 the panel ranked them. That's the best memory I have.

1 THE COURT: Go ahead, Mr. Amabile.

2 Q. And in your memory, that was all above board, is
3 that correct?

4 A. It was done right in front of me, yes.

5 Q. It was done right in front of you?

6 A. Yes.

7 Q. And it was done accurately, is that correct?

8 A. Yes.

9 Q. Okay. Now, you don't remember that you had Dintaman
10 Number 1 and Siano had Gralinsky Number 1 and that's how
11 you ended up with a tie there?

12 A. I think that's probably right.

13 Q. Okay. So you ranked Ms. Sheila Dintaman Number 1,
14 is that correct, that's your best memory as you sit here
15 today?

16 A. I can't dispute that. I think that's probably
17 right.

18 Q. It's fair to say you're probably not used to being a
19 witness, you're more used to being sort of a little bit
20 to the left of where you are, is that correct?

21 A. In an entirely different court.

22 Q. All right.

23 Now, Ms. Gralinsky -- I mean Ms. Dintaman, excuse
24 me, where was she working at the time of that interview?

25 A. I think she was -- I think she was in the Family and

1 Probate Court or the District Court. I'm not certain.

2 Q. All right. Well, she had worked for many years in
3 District Court, is that correct?

4 A. That's right.

5 Q. And that's how you came to know her, is that true?

6 A. Yes.

7 Q. And then you're aware of the fact that she had
8 transferred to the Probate Court, is that correct?

9 A. Yes.

10 Q. And in neither of those courts do people, um,
11 supervise folks that are convicted of serious felony
12 cases, is that correct?

13 A. Well, the Probate and Family Court doesn't have any
14 supervision of -- excuse me, of criminals, that's a
15 family and probate -- it's of family matters. The
16 District Court does supervise people who have been
17 convicted of criminal offenses that are within the
18 jurisdiction of the District Court, which can be
19 punishable for sentences of up to 2 1/2 years in the
20 House of Corrections. So they don't fit within the
21 classification of "felonies," but they are serious
22 offenses.

23 Q. Well, correct me if I'm wrong, but the District
24 Court has jurisdiction over minor felonies and
25 misdemeanors, is that correct?

1 A. That's right.

2 Q. And so the supervision is of people convicted of
3 minor felonies or misdemeanors, is that correct?

4 A. That's right.

5 Q. Now, on the other hand the juvenile court has
6 jurisdiction over offenders that run the gamut from
7 minor misdemeanors all the way up to very serious felony
8 cases, isn't that correct?

9 A. You mean --

10 Q. Juvenile court.

11 A. You mean delinquency proceedings?

12 Q. Delinquency proceedings, yes.

13 A. Of children who are found delinquent by reason of --

14 Q. It could be armed robbery, right?

15 A. That's true.

16 Q. Serious drug offenses, is that correct?

17 A. That's right.

18 Q. Assault with intent to commit murder, is that
19 correct? Shooting people like in a town like
20 Springfield --

21 THE COURT: Well, we're not going to go
22 through the criminal code.

23 MR. AMABILE: No, no, we're not, but I'm just
24 trying to make a point here.

25 THE COURT: I think you've made it. Go ahead.

1 Q. So in other words, in juvenile court in Springfield,
2 you're supervising very serious youthful offenders, is
3 that correct?

4 A. I'm sorry I can't say that that's correct.

5 Q. Why can't you say that's correct, what's your
6 hesitation in saying that's correct?

7 A. Because generally if a child has been found
8 delinquent by reason of that kind of a serious offense,
9 they're committed to the Department of Youth Services
10 and they're not on probation.

11 Q. Oh -- all right. And even if it's a first offense?

12 A. I'm not saying in all cases, I'm just saying that I
13 can't agree with the wholesale of what you just said.
14 That's all.

15 Q. Well, so, in other words, just like in an adult
16 court, in Superior Court most offenders -- or a lot of
17 offenders get sentenced to prison, is that correct?

18 A. Yes.

19 Q. And the probation department then doesn't have any
20 role in supervising them, is that correct?

21 A. If there's a, um, probation term as part of the
22 sentence, which oftentimes there may be, then they do,
23 but otherwise not.

24 Q. Okay. So, for example, if somebody was in the
25 Greenfield Superior Court on an armed robbery charge and

1 it was a first offense, they might be given a suspended
2 sentence, is that correct?

3 A. I don't think they can get a suspended sentence on
4 that.

5 Q. Well, how about attempted murder, they might get a
6 suspended sentence?

7 A. They can get a suspended sentence to the House of
8 Correction, but you cannot suspend a sentence to state
9 prison.

10 Q. All right. I'm not talking about your own practice
11 here and --

12 A. No, no, and I'm not either.

13 Q. Okay. And similarly in juvenile court someone
14 charged with attempted murder could receive a suspended
15 sentence to the Department of Youth Services, is that
16 correct?

17 A. Yes.

18 Q. And if someone's sentence is suspended, they then
19 are under the supervision of the probation department,
20 is that correct?

21 A. Yes.

22 Q. So would it be fair to say that Mr. Glenowicz had
23 more experience dealing with serious criminal offenders
24 than did Ms. Dintaman?

25 A. I don't know whether that's fair to say.

1 Q. Is it unfair to say?

2 A. I don't know whether --

3 Q. I'm sorry?

4 A. No, no, go ahead. I'm sorry.

5 Q. Is that a reasonable thing to say?

6 MR. FISHER: Your Honor --

7 A. I don't really know, to be honest. I just can't
8 endorse it. I'm not sure.

9 Q. Is that because you just don't really know much
10 about juvenile court or why can't you endorse it, what's
11 the issue?

12 A. I would need to have more information in order to
13 feel comfortable saying that that was the case.

14 Q. Now, when you conducted this interview for the
15 Assistant Chief in the Greenfield Superior Court, you
16 knew Sheila Dintaman, is that correct?

17 A. Yes.

18 Q. And you've known her for many years, is that
19 correct?

20 A. Yes.

21 Q. And she had used you as a reference for the job, is
22 that correct?

23 A. Yes.

24 Q. And you factored that into the way you ranked her,
25 is that correct?

1 A. I'm not sure my knowledge of her affected anything.

2 Q. Well, how could it not, is that correct?

3 A. Well, yes.

4 Q. I mean the fact that you were acting as a reference
5 factored in, is that correct? Well, it had to, right?

6 A. I don't know. I don't know how to divide that. I
7 viewed her as a good candidate, um, because of what I
8 knew of her and from that I was a reference.

9 Q. Well, I mean the way this process was set up, it was
10 kind of hard to kind of slice and dice what part of your
11 evaluation came from the actual interview and what part
12 came from your acting as a reference and your prior
13 knowledge of the candidate, is that correct?

14 A. Um, I wouldn't put it that way, but I agree that
15 certainly my knowledge of whomever came in for
16 interviews and what I knew of them professionally, um,
17 was certainly a factor as well as how that person did,
18 um, in the interview itself.

19 Q. All these things sort of amalgamated into your
20 ranking, is that fair?

21 A. I think that's fair.

22 THE COURT: There's a juror question to me,
23 which I should answer right away.

24 Neither Sheila Dintaman nor the, um --

25 Who's the other person on the tie?

1 THE WITNESS: Michael Gralinsky.

2 THE COURT: Michael?

3 THE WITNESS: Gralinsky.

4 THE COURT: Gralinsky.

5 Neither Sheila Dintaman or Michael Gralinsky is a
6 charged hire. Frank Glenowicz is a charged hire.

7 Go ahead.

8 Q. Now, you're aware of the fact that the process that
9 you were participating in was dictated by the trial
10 court policies and procedures manual, is that correct?

11 MR. FISHER: Objection, your Honor.

12 THE COURT: Well, she can be asked whether she
13 knows.

14 Q. Did you know that?

15 A. I presume it.

16 Q. All right. And you're familiar with that manual, is
17 that correct?

18 A. No.

19 Q. You've never looked at it?

20 A. I've looked at it, but I can't say I'm familiar with
21 it.

22 Q. But you would agree that it was the document that
23 set forth the procedures?

24 A. I presume it did.

25 Q. And as far as you know those procedures were

1 followed, is that correct?

2 A. As far as I know? I have no -- I don't know whether
3 they were or they weren't. I presume that they were.

4 Q. All right. In other words, everything you saw was
5 done right in front of you, is that correct?

6 MR. FISHER: Objection, your Honor.

7 A. Everything that I -- I'm sorry?

8 THE COURT: Well, the question is a little
9 tautological, "Everything that you saw was done right in
10 front of you, is that correct?"

11 (Laughter.)

12 A. I did not see things that were not done in front of
13 me.

14 (Laughter.)

15 THE COURT: Are you about done with this
16 witness, Mr. Amabile?

17 MR. AMABILE: No, your Honor. I don't have
18 much more, but I do have a little more.

19 THE COURT: And I need the break and we will
20 take it.

21 All right. Ladies and gentlemen, you've not heard
22 all the evidence. Please therefore -- I recognize we
23 have documents being passed and you're quite right, when
24 that happens, just put them on the seats where no one
25 goes into your box, put them on the seats, and you may

1 have them again after the break. We'll take the break
2 now.

3 Keep your minds suspended, do not discuss the case
4 either among yourselves nor with anyone else. You may
5 stand in recess for 15 minutes. I'll remain on the
6 bench.

7 (Jury leaves, 11:00 a.m.)

8 THE COURT: You may step down, ma'am, please,
9 and be seated.

10 This is just general, but actually specific for
11 Mr. Amabile.

12 Mr. Amabile, I have a series of some medical
13 appointments of no great consequence, but I have to go
14 to them. On Monday the 30th, see we've been starting at
15 10:00, but I can't make it, so I want to start at 9:00.
16 Now, I've accommodated you, so I propose to tell the
17 jury that on that week, if we're still going, we'll
18 start at 9:00 and have the normal trial day.

19 MR. AMABILE: I will report as ordered by the
20 Court.

21 THE COURT: I thank you. We'll recess for 15
22 minutes.

23 (Recess, 11:00 a.m.)

24 (Jury enters, 11:20 a.m.)

25 THE COURT: Proceed, Mr. Amabile.

1 MR. AMABILE: Thank you, your Honor.

2 Q. Judge Josephson, do you know a Richard Hogan?

3 A. Yes.

4 Q. Who is Richard Hogan?

5 A. He is a probation officer -- I don't think he's
6 actually a probation officer anymore --

7 Q. He's retired?

8 A. Right, I think he's retired from the Greenfield
9 District Court.

10 Q. Right. He was the chief probation officer in the
11 Greenfield District Court, is that correct?

12 A. You're absolutely right, Mr. Amabile.

13 Q. And as such he was Sheila Dintaman's supervisor, is
14 that correct?

15 A. Yes, he was.

16 Q. Now, getting back to the list there, the five people
17 or the six people that were sent forward.

18 You're aware that the purpose of this interview
19 was to screen qualified candidates and send a number of
20 them forward for a final interview, is that correct?

21 A. I think that's right.

22 Q. Okay. And it's true that every one of the six
23 people on that list were qualified, is that correct?

24 A. Yes.

25 Q. And it would be a fair statement to say that

1 determining who the most qualified was is a subjective
2 determination, isn't that correct?

3 A. To a certain extent, yes.

4 Q. It's a matter of opinion, isn't it?

5 A. To a certain extent, yes.

6 Q. And on that panel there were three people, is that
7 correct? Do you know?

8 A. On my panel, yes.

9 Q. You and Mr. Siano and Mr. Burke, is that correct?

10 A. That's right.

11 Q. And all three of you had a different opinion about
12 who would be the best person to serve in that capacity,
13 is that correct?

14 A. As to who our top candidate was?

15 Q. Sure.

16 A. Yes.

17 Q. All right. Now, you said you knew a number of those
18 candidates and that you listed them off. The top four
19 that you had ranked were all people you knew, is that
20 correct?

21 A. That's true.

22 Q. Okay. And Mr. Glenowicz was ranked Number 5 and you
23 did not know him, is that correct?

24 A. That's right.

25 Q. We have to agree that that factored into your

1 ranking him Number 5, is that correct, the fact that you
2 had no knowledge of him before this interview, is that
3 correct?

4 A. I don't think I can say that's correct, I think --

5 Q. You don't think you can say that's correct?

6 A. I don't think, no.

7 Q. That had nothing to do with your ranking of him, is
8 that your testimony?

9 A. No, I think that the fact that I didn't know him,
10 um, didn't give me, you know, more information obviously
11 than I would have had had I known him, but I also --
12 with Jill Moriarty I really didn't know her, it was
13 simply she was someone I think I was familiar with in
14 some way. But I'm not even sure of that.

15 Q. Where did you know Sheila Moriarty from?

16 A. I'm not sure if she went through another interview,
17 um --

18 Q. She was coming from Cape Cod at that time, is that
19 correct?

20 A. Um, I may be mistaken because she is now the -- I
21 know her now, but I can't say I knew her then.

22 Q. In fact she is now the Chief in Greenfield, is that
23 correct?

24 A. That's right.

25 Q. All right. And you're also aware of the fact that,

1 um, these candidates had interviewed at various other
2 places, is that correct?

3 A. I presume it.

4 Q. And, um, there was a standard set of questions, is
5 that correct?

6 A. There were, um --

7 Q. Everyone was asked the same exact questions at the
8 interview, is that correct?

9 A. At different interviews or at that interview?

10 Q. No, at this particular interview.

11 A. Yes.

12 Q. And for each type of posting there was a standard
13 set of questions, is that correct?

14 A. I think that's right.

15 Q. All right.

16 THE COURT: Just so I'm clear, and I asked you
17 this before, I think.

18 You don't have a recollection as to where
19 personally you ranked Mr. Glenowicz?

20 THE WITNESS: Aside from to say he was either
21 last or second to last, no.

22 THE COURT: All right.

23 Q. All right. Last or second to last of the final six,
24 is that correct?

25 A. You know, I'm sorry, I should have said it. I don't

1 know if he was in my final six or not. I know he was at
2 the -- he was lower than, um, the people certainly who
3 are ahead of him on this sheet.

4 Q. The interview process, it would be fair to say, was
5 perfunctory, is that a fair characterization?

6 A. No.

7 Q. You went through a standard set of questions, is
8 that correct?

9 THE COURT: Well, have in mind her answer, her
10 answer was "No."

11 Q. You went through a standard set of questions, is
12 that correct?

13 A. We did.

14 Q. The interview took about 15 minute, is that correct?

15 A. I don't recall what it took.

16 Q. Well, you say that you thought there were up to nine
17 people interviewed, is that correct?

18 A. Yes.

19 Q. You don't know how long the interviews took?

20 A. I don't.

21 Q. Was it an hour? Was it two hours? Three hours?

22 A. No, it was not that long.

23 Q. Was it an afternoon?

24 A. Per interview? No.

25 Q. Per the entire interviews.

1 A. It may well have been.

2 Q. An afternoon, was that correct?

3 A. It could have been or could have been -- I'm sorry,
4 I don't remember how long it took.

5 Q. Now, in terms of knowledge of the candidates, you
6 know that Billy Burke was the Deputy Commissioner for
7 Western, Massachusetts at the time that this interview
8 took place, is that correct?

9 A. I don't doubt that. I can't say -- and I'm not
10 trying to, um, parse my words, but I just don't know
11 what his title was and I'm sorry I really -- in fact I
12 don't dispute that that was the right title, I just
13 can't recall what it was.

14 Q. All right. Well, you knew he was in a supervisory
15 capacity within the Western Massachusetts Probation
16 Department, is that correct?

17 A. Yes.

18 Q. And he had been in that capacity for a number of
19 years?

20 A. That's right.

21 Q. And you had known him in that capacity?

22 A. Yes.

23 Q. And you had seen him in that capacity, is that
24 correct?

25 A. Yes.

1 Q. And you had interacted with him many many times in
2 that capacity, is that correct?

3 A. Yes.

4 Q. Maybe dozens of times over the years, hundreds of
5 times, going back to your days in the District
6 Attorney's Office?

7 A. Not necessarily in that capacity, but I certainly
8 saw Mr. Burke very -- along the lines that you're
9 talking about in our, um, travels throughout the trial
10 court.

11 Q. Very frequently, isn't that true?

12 A. Um, frequently.

13 Q. And that was true during this time frame as well,
14 isn't that correct?

15 A. Yes.

16 Q. And in that time frame, if I'm to understand what
17 we've discussed before, you essentially rotated between
18 Hampden County, which is Springfield, and Franklin
19 County, which is Greenfield, is that correct?

20 A. Not entirely.

21 Q. All right. I don't want to put words in your mouth.
22 But tell the jury where you would sit?

23 A. I would sit in Hampden County, Springfield, which
24 has seven different Superior Courts in it, for probably
25 about six months out of the year, and then I would sit

1 about probably, um, the other months divided between
2 Franklin County, Superior Court, which is Greenfield,
3 and Hampshire County Superior Court, which is North
4 Hampton.

5 Q. Okay. And is that still your rotation?

6 A. Pretty much, yes.

7 Q. All right. And when you say there's seven Superior
8 Courts in Hampden County, you mean there are seven
9 sessions in the Superior Court?

10 A. Right, at that time.

11 Q. Which is in the Hall of Justice, is that correct?

12 A. That's correct.

13 Q. Okay. And you would see Billy Burke in Hampden
14 County, is that correct?

15 A. Mostly, yes.

16 Q. But you'd see him in Hampshire County as well, is
17 that correct?

18 A. Sometimes, yes.

19 Q. Well, he had an office in the courthouse at
20 Hampshire County, is that correct?

21 A. Right, but I saw him more frequently in Hampden
22 County because the different courts used the same areas
23 more in Hampden County than in Hampshire County.

24 Q. And that's also because you were there for six
25 months and only three months in Hampshire, is that

1 correct?

2 A. Fair enough, yes.

3 Q. And three months in Franklin County, is that
4 correct?

5 A. Pretty much.

6 Q. And you would see him in Franklin County as well, is
7 that correct?

8 A. Pretty much, yes.

9 Q. And is the District Court and Superior Court in
10 Franklin County in the same building?

11 A. It is.

12 Q. Okay. And the occasions you'd see him was because
13 he, as the supervisor of the whole Western part of the
14 state, would travel to all of the different courts in
15 the Western part of the state in the course of his
16 employment, is that correct?

17 A. That's correct.

18 Q. And he would interact with the judges, is that
19 correct?

20 A. I don't know.

21 Q. Well, did he interact with you?

22 A. Yes.

23 Q. All right. So from that can you say that he
24 interacted with at least one judge?

25 A. I think that's fair.

1 Q. You never saw him interacting with any of other
2 judges?

3 A. I don't know if he did or not. I presume he did,
4 but I can't say that I saw him interacting with other
5 judges.

6 Q. All right. You have no present memory of him
7 interacting with other judges?

8 MR. FISHER: Objection, your Honor.

9 THE COURT: He may ask the question. He may
10 ask it in that form.

11 Do you have any memory, present memory?

12 THE WITNESS: I can't say that I do.

13 THE COURT: There's a juror question, but it
14 doesn't go to any evidentiary matter, so I'll just ask
15 it.

16 You used the word "seven sessions of the Superior
17 Court sitting in the Hall of Justice." Well, that's his
18 questions and your answers.

19 Explain to the jury what that means, "seven
20 sessions of the Superior Court sitting in the Hall of
21 Justice in Springfield"?

22 THE WITNESS: Okay.

23 What that means is that there are, um -- there
24 were at that time, there were seven Superior Court
25 courtrooms with a judge in each Superior Court courtroom

1 conducting sessions. There were, I think, at that time
2 five criminal sessions where we heard criminal cases,
3 four of those were hearing criminal trials, one was what
4 we called an "assigning session" that hears everything
5 else that's criminal and sends out those trials and
6 hears motions and so on, and then the other two
7 courtrooms were used for civil trials.

8 THE COURT: Go ahead, Mr. Amabile.

9 MR. AMABILE: Thank you, your Honor.

10 Q. And you had occasion to see Billy Burke interacting
11 with chief probation officers, is that correct?

12 A. I probably did, but I don't have a specific
13 recollection.

14 Q. But you're sure you did?

15 A. It would be highly unlikely that I wouldn't have.

16 Q. All right. And with assistant chief probation
17 officers, is that correct?

18 A. Yes.

19 Q. And with line probation officers, is that correct?

20 A. Yes.

21 Q. And that was because that was his job, to interact
22 with all these people and to supervise and monitor their
23 performance, isn't that correct?

24 A. That's what I assume, yes.

25 Q. Well, you're not just assuming that, you know that

1 to be true as a justice of the Superior Court and a
2 former justice of the District Court?

3 MR. FISHER: Objection, your Honor.

4 THE COURT: No, he may press it, but -- well,
5 we'll see how she answers.

6 Do you know it to be true?

7 A. Well, in the way that the question was asked,
8 Mr. Amabile, you asked me if that's why he was
9 interacting with them, was that it was his
10 responsibility to? I presume that's why he was
11 interacting with them, but I wasn't privy to what he was
12 doing with them. I don't know how much was within his
13 job responsibilities and how much was something other
14 than that. I presume it was because it was part of his
15 job.

16 THE COURT: That's her answer. Go ahead.

17 Q. And you're aware of the fact that in his -- the
18 performance of his job, he got to know all of the people
19 that worked within the probation department in Western,
20 Massachusetts, is that correct?

21 A. I don't know what he and who he knew. I would
22 presume again that he certainly had contact with the
23 Probation Department and people in the Probation
24 Department in Western, Massachusetts in fulfilling his
25 job responsibilities, yes.

1 Q. And he had been doing that for what -- well, he
2 retired in 2009, you recall that?

3 A. I didn't, but I know he retired.

4 Q. And you're aware of the fact that he worked for 37
5 years in the Probation Department in Western,
6 Massachusetts, is that correct?

7 A. I know it was for a long time.

8 Q. And your interactions with him date all the way back
9 to when you were an Assistant District Attorney working
10 for Mike Ryan, is that right?

11 A. That's right.

12 Q. Now, you're aware of the fact that he knew virtually
13 everybody that was interviewed in this particular
14 scenario, is that correct?

15 A. I'm not aware of it, but I would not be surprised to
16 know that.

17 Q. Well, what Sheila Dintaman did -- when she came into
18 the room, did she say, "Hi, Billy"?

19 A. I don't recall.

20 Q. You don't remember that?

21 A. I don't remember that, but I again --

22 Q. You would assume she probably did?

23 MR. FISHER: Objection.

24 THE COURT: Wait a minute. The testimony is
25 she does not remember. We'll leave it at that. The

1 objection is sustained.

2 Q. You don't remember that she -- that it was obvious
3 that Sheila Dintaman and Billy Burke knew each other, do
4 you recall that?

5 MR. FISHER: Objection.

6 THE COURT: He can press it, just don't assume
7 what's assumed in the questions. It's always the
8 testimony of the witness.

9 MR. AMABILE: Thank you, your Honor.

10 THE COURT: Was that your impression?

11 A. I don't have a specific recollection, but what I can
12 say perhaps to help is it's a small community, we --
13 it's Western, Massachusetts. I would be very surprised
14 if somebody walked in and all of us did not -- if that
15 was somebody who had been in the Probation Department or
16 in the court system in Western, Massachusetts or lived
17 there, that we would not, um, have a friendly greeting
18 indicating that we knew that person.

19 Q. All right. And that would be the same with
20 Mr. Gralinsky, Billy Burke knew Frank -- or Michael
21 Gralinsky and they greeted each other as colleagues when
22 he came in there?

23 A. Again I don't have a specific recollection, but that
24 wouldn't surprise me.

25 Q. Now, are you aware of the fact that Billy Burke used

1 to go out on home visits with Mr. Gralinsky?

2 A. No, I did not.

3 Q. That topic didn't come up?

4 A. Not that I recall.

5 Q. All right. And, um, Mr. Burke used to interact with
6 Dick Hogan, the Chief of the Greenfield District Court,
7 is that correct?

8 A. Yes.

9 Q. And you've seen that on many occasions, is that
10 correct?

11 A. Yes.

12 Q. And Dick Hogan was Sheila Dintaman's supervisor for
13 20 years, is that correct?

14 A. I don't know how long, but that would sound right.

15 Q. Okay. So it would be fair to say that in terms of
16 knowledge going into this interview, Bill Burke was the
17 person that had the most knowledge about the most number
18 of these candidates, is that correct?

19 MR. FISHER: Objection.

20 THE COURT: Yeah, sustained on this
21 foundation.

22 MR. AMABILE: I'll move on.

23 Q. Now, would it be fair to say that Bill was a major
24 presence in the Probation Department in Western,
25 Massachusetts?

1 A. Yes.

2 Q. And your experience with him was that he was a very
3 responsive probation officer, is that correct?

4 A. I never really dealt with him when he was a
5 probation officer.

6 Q. Well, as a chief he was responsive if you ever
7 needed anything, is that correct?

8 A. Yes.

9 Q. He was accessible, is that correct?

10 A. He was accessible.

11 Q. And he was a very friendly person, is that correct?

12 A. A very friendly person.

13 Q. And he was very cordial and friendly to all of the
14 court personnel, isn't that correct?

15 A. Yes, he was.

16 Q. The court officers, the clerks --

17 MR. FISHER: Objection, your Honor.

18 THE COURT: Well, I don't know if that's a
19 question. We'll have a question.

20 Q. That he was very well liked, wasn't he?

21 MR. FISHER: Objection.

22 THE COURT: Sustained.

23 Q. Well, you liked him, didn't you? Didn't you like
24 him? Don't you like him?

25 A. I didn't dislike him.

1 Q. You like him, don't you?

2 (Laughter.)

3 MR. FISHER: Your Honor?

4 THE COURT: No, he's entitled to have that
5 because you're going to evaluate all these witnesses and
6 take their testimony, so it's appropriate for anyone to
7 inquire about hostility, friendship, and the like so you
8 can evaluate whether in any way that colors their
9 testimony. It's an appropriate area for you to consider
10 and so it's appropriate to ask you the question.

11 Did you like him?

12 Q. You like Billy Burke, don't you?

13 A. It's hard not to like Mr. Burke. He's a very
14 affable man. I know his family. I know his daughter.

15 Q. And you know his wife, Maryanne, she's here in court
16 today?

17 MR. FISHER: Your Honor, I object.

18 THE COURT: That's sustained.

19 Q. (Pause.) Now, you've been a probation officer --
20 excuse me, a lawyer, a District Court judge, and a
21 Superior Court judge over the last how many years?

22 A. Um --

23 Q. I'm not trying to get personal here.

24 A. No, I understand, but it's a math problem. Since,
25 um -- since 1978 when I passed the bar.

1 Q. Okay. So you've had experience observing the
2 performance of the Probation Department over a 34 -- 36
3 year period, is that correct?

4 A. Yes.

5 Q. And is it true that between the period of 2000 and
6 2010, in your view the probation department in Western,
7 Massachusetts was performing effectively?

8 MR. FISHER: Objection, your Honor.

9 THE COURT: You object to that?

10 MR. FISHER: I do, your Honor, yes, it's
11 outside the scope.

12 THE COURT: Well, it's outside the scope, but
13 I will sustain it.

14 MR. AMABILE: I would ask to be heard, your
15 Honor.

16 THE COURT: You may be.

17

18 AT THE SIDEBAR

19 THE COURT: We're not going to be asking them
20 about the performance of the Probation Department, we're
21 going to be asking them about specific bribes.

22 MR. AMABILE: All right. I'll withdraw the
23 question. But I just want to say, just so you know why
24 I think I had a reason to do that, is because they
25 brought up this whole morale issue to Cremens. But I'll

1 withdraw it.

2 THE COURT: Very well.

3 MR. AMABILE: Thank you.

4

5 (In open court.)

6 Q. Judge Josephson, do you know -- do you know a man
7 named Christopher Hoffman?

8 A. Yes.

9 Q. And how do you know Mr. Hoffman?

10 A. He was a probation officer in the Hampden County
11 Superior and then became the Acting Chief or Chief, and
12 I apologize for not knowing which, um, in the Hampshire
13 Superior probation.

14 Q. Well, all right, let's move back a little bit to the
15 beginning. He was an associate probation officer in
16 Hampden Superior Court?

17 A. You're right.

18 Q. Is that correct?

19 A. You're right.

20 Q. And that's the place where you sit six months out of
21 the year, is that correct?

22 A. That's right.

23 Q. And, by the way, are you primarily in the criminal
24 session in the Hampden Superior Court?

25 A. Um --

1 Q. Could you give us a percentage?

2 A. I tried to keep it 50/50.

3 Q. All right. So Hoffman was an associate probation
4 officer there, is that correct?

5 A. Yes.

6 Q. And then he was hired as a probation officer in
7 Hampden County, is that correct?

8 A. That's right.

9 Q. And at some point he was given an appointment as a
10 probation officer in Hampshire County, is that correct?

11 A. That's right.

12 Q. All right, so let's just -- keeping it in that time
13 frame from when he was an associate probation officer
14 until the point when he was appointed a probation
15 officer in Hampshire County, you knew him, is that
16 correct?

17 A. Yes.

18 Q. And you observed his work performance, is that
19 correct?

20 A. Yes.

21 Q. And that included his performance as an associate PO
22 in the Hampden County Superior Court, is that correct?

23 MR. FISHER: Objection.

24 THE COURT: No, overruled.

25 Q. Is that correct?

1 A. Yes.

2 Q. All right. And do you believe that he performed his
3 function as an associate probation officer in the
4 Hampden County Superior Court well?

5 A. Yes.

6 Q. In fact would "very well" be a fair
7 characterization?

8 A. No, I thought he was good.

9 Q. How about "exemplary," could we go there?

10 A. Um -- I suppose.

11 Q. That's a word you'd be comfortable with?

12 A. Um, it's not the one that comes to mind, but I think
13 he was good at -- um, when he was an associate probation
14 officer in Hampden County, yes.

15 Q. All right. Well, what's the biggest compliment
16 you'd be comfortable with?

17 A. He was very good.

18 Q. "Very good." Okay, we'll go with "very good"
19 instead of "exemplary."

20 Okay. So given that he was a very good associate
21 probation officer in Hampden County, um, is it true that
22 you, um, recommended him for his position as a -- when
23 he applied to be a probation officer in Hampden County?

24 A. I think that's true.

25 Q. Okay. And did you either write a letter or call or

1 somehow contact the Commissioner of Probation's Office
2 regarding Christopher Hoffman's ascension to probation
3 officer in Hampden County?

4 A. I don't think I did. I think I told Chris Hoffman
5 that he could list me as a reference. I don't have a
6 memory of contacting anyone or writing a letter.

7 Q. Well, do you have a memory, um, before his
8 appointment -- well, when he was an associate probation
9 officer, he was in your session quite often, is that
10 correct?

11 A. Yes.

12 Q. And on a daily basis, is that correct?

13 A. Pretty much, yes.

14 Q. So you had a lot of ability to observe his skill and
15 ability, is that correct?

16 A. Yes.

17 Q. His work ethic, is that correct?

18 A. Yes.

19 Q. His dedication to what he was doing, is that
20 correct?

21 A. In the courtroom, absolutely.

22 Q. And you were aware that he was a military veteran,
23 is that correct?

24 A. I don't think I was, but --

25 Q. You didn't know that he was in the Gulf War?

1 MR. FISHER: Your Honor, objection to the
2 leading.

3 THE COURT: Yes, you are beyond the scope now,
4 so do not lead this witness.

5 MR. AMABILE: Okay.

6 Q. Well, do you recall, at some point, whether or not
7 in the courtroom you called him up to your bench and
8 informed him that you had made a call to the
9 Commissioner's office?

10 MR. FISHER: Your Honor, objection.

11 THE COURT: Yeah, sustained. You're leading.
12 Don't lead the witness.

13 Q. All right. Did you have any conversation with him
14 about any contact with the Commissioner's office that
15 you can remember?

16 A. I don't remember that.

17 Q. You don't remember it?

18 A. No.

19 Q. You don't deny that, but you don't remember it?

20 MR. FISHER: Objection, your Honor.

21 THE COURT: Sustained.

22 Q. But you do recall that you agreed to either be
23 listed as a reference or to support his candidacy, is
24 that correct?

25 A. Yes.

1 Q. And you thought his appointment to the Hampden
2 County Superior Court was a very good thing, is that
3 correct?

4 MR. FISHER: Objection, leading.

5 THE COURT: It is. Sustained.

6 Q. Well, how would you characterize your views of his
7 appointment as a probation officer?

8 A. I thought he was a good probation officer.

9 Q. Okay. Are you aware of the fact that you appear on
10 some of these -- on one of these sponsor lists as a
11 sponsor for Christopher Hoffman with the Commissioner of
12 Probation?

13 A. I am now aware.

14 THE COURT: I didn't get the answer?

15 THE WITNESS: I'm sorry.

16 A. I am now aware of it.

17 Q. But you don't recall how that came about?

18 A. I don't.

19 Q. (Pause.) Now, are you aware of the fact that there
20 was political influence in probation hiring prior to the
21 year 2000?

22 MR. FISHER: Objection, your Honor.

23 THE COURT: No, she may be asked about that.

24 Did you have a belief about that subject?

25 THE WITNESS: Um, yes.

1 THE COURT: And I messed it up by asking -- by
2 interjecting myself.

3 And so what's the answer to his question, were you
4 aware that there was political influence in hiring prior
5 to 2001?

6 A. I don't know that I knew that there was -- I don't
7 know that I knew that there was influence that was
8 successful influence, but I certainly knew that there
9 was, um --

10 Q. Attempted influence?

11 A. Or it was -- that there was a factor of some sort.

12 Q. Okay. Well, elaborate to the jury, if you would.
13 I'm going to ask that in a nonleading way, your Honor.
14 Elaborate what you know?

15 MR. FISHER: Objection, your Honor.

16 THE COURT: She may tell us what she knows
17 herself.

18 THE WITNESS: Of my own?

19 THE COURT: Yes.

20 A. Of my own personal knowledge, and I am assuming that
21 you're talking about before 2000?

22 Q. Yeah.

23 A. That there was a political component to the hiring
24 process based on people's, um, who people may have had
25 as references, who people may have had supporting their

1 candidacy, and I just assumed and believed that there
2 was a political aspect to hirings.

3 Q. And that occurred up and down from the janitor to
4 the judges, is that true?

5 A. Well, I suppose that's true.

6 Q. Well, you know that's true, don't you?

7 MR. FISHER: Objection, your Honor.

8 A. Well, I know that --

9 THE COURT: Well, he may press it, in that
10 form.

11 A. I don't know it in every case certainly.

12 Q. Well, you know it in terms of judicial appointments?

13 A. I know certainly there's a political component, yes.

14 Q. And you knew that it was true with respect to, um,
15 probation employees?

16 A. Yes.

17 Q. You knew it was true with the court security
18 officers?

19 A. I think that's right.

20 Q. And you knew it was true with maintenance personnel
21 in the various courthouses, is that correct?

22 A. Again I can't tell you that I have specific
23 knowledge regarding that, but I assume it.

24 Q. And clerical personnel as well, is that correct?

25 A. I think that's probably true.

1 Q. Well, you know it's true, isn't that correct?

2 A. Well, again, I mean when you're talking about much
3 broader --

4 Q. Western, Massachusetts is a small place, it's a
5 tight community and everybody knows everybody, right?

6 A. That's right.

7 Q. So in other words you would know if family members
8 were involved and people who were connected with various
9 politicians, or whatever the heck might be the case, you
10 know that, right, before 2000, don't you?

11 A. Well, I certainly know -- you're right, I certainly
12 would know people's families, people's, um -- you know,
13 the communities, as I said, are small, there are
14 oftentimes people who have had family members who work
15 in the court and of course you know their family
16 members. And again it's a small community.

17 Q. Bill's daughter, Mindy Burke, worked in the court,
18 is that correct?

19 A. Yes, she did.

20 Q. She still does.

21 A. Well, she worked in the D.A.'s office.

22 Q. Oh, she worked in the D.A.'s office?

23 A. Well, um, Tracy worked there.

24 Q. Oh, Tracy. And then Mindy was -- is still working
25 in the electronic monitoring office, is that correct?

1 A. I don't really know Mindy.

2 Q. Okay. Fine.

3 And did you ever have any specific involvement
4 before 2000 where you were involved in the hiring
5 process and there was either political influence or an
6 attempt to assert political influence on probation
7 hiring?

8 A. Yes.

9 Q. Okay. Well, could you describe that to the jury?

10 A. Um --

11 Q. Just your best memory here. It's a long time ago.

12 A. Okay.

13 Well, there was a time where, um, being on the
14 Superior Court probation, um --

15 Q. "Hiring committee," was it called?

16 A. Yeah, it was called the "Superior Court, um,
17 Probation Committee" that also did screenings for
18 hirings and, um, there was one occasion where I recall
19 before doing a series of interviews for a number of
20 positions and receiving a call from someone who I didn't
21 know but who I knew was a legislator in Western,
22 Massachusetts.

23 Q. Was that Petrolati?

24 A. It was Mr. Petrolati, yes, and I got a message
25 simply that he had called. I did not call him back

1 until after the interviews took place and we had made
2 our selections and then I called him back, but he and I
3 never spoke.

4 Q. All right. And was there an occasion when you spoke
5 to Chief Judge Suzanne Del Vecchio?

6 A. Yes.

7 Q. Okay. And would you allay that scenario to the
8 jury.

9 A. Before a hiring or interviews of -- I think it might
10 has been seventy different candidates for a number of
11 different probation officer positions, um, she indicated
12 to me that there were four candidates that she was
13 hopeful would make it through the process.

14 Q. Did those four candidates make it through the
15 process?

16 A. No.

17 Q. Okay. And did you later have a conversation with
18 her in her office about that?

19 A. Yes.

20 Q. And did you -- is it true that you heard her --

21 MR. FISHER: Objection.

22 THE COURT: Yeah, come to the sidebar.

23

24 AT THE SIDEBAR

25 THE COURT: Well, isn't this interesting. And

1 I say that in all honesty.

2 What do you think she's going to answer?

3 MR. FISHER: I know what she's going to say
4 and I objected to it because I don't want her testifying
5 to it.

6 THE COURT: Well, what's she's going to say?

7 MR. FISHER: She's going to say that Judge Del
8 Vecchio called Sal DiMasi and told him he's not going to
9 get the names on the list and Judge Del Vecchio told Sal
10 DiMasi, "You should send me some qualified candidates
11 for now who can make it through the interviews."

12 THE COURT: And how do you think that's
13 admissible?

14 MR. AMABILE: I think it's admissible, your
15 Honor, not necessarily for the truth, but to show the
16 state of mind and present intention on the part of the
17 judges and with respect to the hiring process.

18 THE COURT: Well, Del Vecchio was the Chief
19 Justice of the Superior Court and she was succeeded by,
20 um --

21 MR. FISHER: Judge --

22 THE COURT: The current Chief Justice
23 succeeded her, did she -- wasn't Judge Mulligan the
24 Chief Justice?

25 MR. FISHER: She's --

1 MR. AMABILE: He just told us about it this
2 morning, Judge. In other words, apparently we didn't
3 know anything about it and they properly, and I wanted
4 to commend them, revealed what is clearly potentially
5 exculpatory evidence and I want to commend the
6 government's attorneys for promptly doing this.

7 MR. FISHER: Judge, she learned of this
8 conversation this morning, so I told my brother.

9 THE COURT: Oh, I'm very grateful. I think
10 you should have.

11 But the fact that it was said, is the speech --
12 then the issue before me is is the speech relevant?
13 Now, this is a Chief Justice who's never been Chief
14 Justice of Administration and Management.

15 MR. FISHER: Yes, and my understanding, from
16 what Judge Josephson told us this morning, is Judge Del
17 Vecchio was the Chief Justice of the Superior Court at
18 the time.

19 THE COURT: Oh, I think I can take judicial --
20 Oh, I see that. When it happened I know she was the
21 Chief Justice of the Superior Court.

22 MR. FISHER: Yes.

23 THE COURT: And in Josephson's presence she
24 has a telephone call ostensibly with DiMasi?

25 MR. FISHER: With Sal DiMasi, correct, Judge.

1 Judge Josephson was not on the call, she only heard the
2 call with Judge Del Vecchio.

3 THE COURT: Well, she may have it for the fact
4 that it occurred because now she's testified -- here
5 is -- I continue to have problems with where the line is
6 drawn with respect to what's criminal. Here we have the
7 Chief Justice, if she's believed, the Chief Justice of
8 the Superior Court, saying, "I'm interested in these
9 names," but presumably if the system works appropriately
10 these people don't get through. Then there's a later
11 interaction between this associate justice and the Chief
12 Justice.

13 Now, unlike the federal system, the state system,
14 where we can say we have -- the federal system is a weak
15 Chief Judge, the Chief Judge is the spokesperson for the
16 court, but the judges make all the policy for the court
17 by majority vote. The state system is different, the
18 Chief Justice is a separate -- well, today it's selected
19 by the Chief -- by the Supreme Judicial Court and has
20 significant powers, among which is the power to assign a
21 justice where the associate justice sits. So that's a
22 superior position, all of which leads me to say that if
23 he wants it, he ought to get it, it seems to me.

24 MR. FISHER: Sure.

25 THE COURT: Fine.

1 MR. AMABILE: I want to say one thing. I
2 object to the characterizing of the Chief here as not
3 powerful especially during the years your Honor was the
4 chief.

5 MR. SINNIS: I don't object to that.

6 THE COURT: Those sort of comments, of course,
7 have no bearing and I stand by what I said.

8 MR. AMABILE: I withdraw the objection.

9 THE COURT: Enough said.

10

11 (In open court.)

12 THE COURT: It isn't rocket science what I
13 talked to them about. Really, as the judge, and in
14 terms of the law of evidence, I'm trying to keep us
15 focused on what are the specific issues in this case,
16 but to allow enough background and other testimony,
17 without using the legal words, to allow you to evaluate
18 all the central issue.

19 Now, we're somewhat far afield here, but if we
20 limit it to what she said and what the then Chief
21 Justice of the Superior Court, Suzanne Del Vecchio said,
22 not for whether any of it was true, but for the fact
23 they had this conversation, I'm going to admit it.

24 So with that in mind, you had a conversation with
25 the Chief Justice of the Superior Court and tell us

1 again who that was at that time?

2 THE WITNESS: Suzanne Del Vecchio.

3 THE COURT: Okay, so limiting it, um, what was
4 said?

5 THE WITNESS: Before the interviews, um, Chief
6 Del Vecchio indicated or gave me, um, a piece of paper
7 that had four names on it and indicated that she was
8 hopeful that those people would make it through the
9 interview process. This was before we were going to
10 have the interview by the committee. I said, "I can't
11 tell the committee what to do," and she, um, appeared to
12 accept that. And we had our interviews. Um, I never,
13 um, even read the names, I just saw that they were
14 names, and, um, those people were not the ones --
15 apparently were not selected when we gave our
16 recommendations as to who should, um, be out of that
17 group, out of that group of 70.

18 THE COURT: What was your position on the
19 probation committee?

20 THE WITNESS: I was the chair.

21 THE COURT: You were the chair.

22 THE WITNESS: Yes.

23 THE COURT: And can you give us a temporal --
24 what time period this was?

25 THE WITNESS: I think it was between 2000 and

1 2001.

2 THE COURT: So in that period?

3 THE WITNESS: Yes.

4 THE COURT: All right. Go from there,
5 Mr. Amabile.

6 Q. Was there a subsequent conversation with Judge Del
7 Vecchio when she was on the telephone call?

8 A. Yes.

9 THE COURT: This, too, is limited for the fact
10 that she heard it, not anything that was said is true or
11 not, just for the fact that it occurred.

12 Go ahead.

13 MR. AMABILE: Okay.

14 Q. And what did you hear at that time?

15 A. I heard her say to the person at the other end of
16 the phone, "Well, they didn't make it through."

17 Q. And did you hear -- did she say who the other person
18 on the other end of the phone was?

19 A. I don't know specifically what she said, but it was
20 my belief that it was, um, the Speaker of the House.

21 Q. Well --

22 THE COURT: And at that time who was the
23 Speaker of the House.

24 A. Sal DiMasi.

25 Q. Well, you believed it was Sal DiMasi, is that

1 correct?

2 A. That's right.

3 Q. And --

4 THE COURT: Well, I'm letting her testify to
5 her belief, but she doesn't know who was on the other
6 end of the line. And go from there.

7 Q. What did you base that belief on?

8 A. Something that the Chief had said, either a name or
9 a position in the conversation.

10 Q. What did you hear her say to the person you believed
11 was the Speaker of the House, Sal DiMasi, at that time?

12 A. Something to the effect -- "Well, they didn't make
13 it through." "Well, next time send me Goddamn
14 candidates who can make it through the interview," or
15 something to that effect.

16 MR. AMABILE: All right. I have no further
17 questions, your Honor.

18 THE COURT: Mr. Denner, any questions for this
19 witness?

20 MR. DENNER: No, sir.

21 THE COURT: No questions.

22 Mr. Sinnis, any questions?

23 MR. SINNIS: No, your Honor.

24 THE COURT: Mr. Fisher, any redirect?

25 MR. FISHER: Very briefly, your Honor.

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REDIRECT EXAMINATION BY MR. FISHER.

Q. Now, Judge Josephson, there were some questions asked of you and you explained that you were listed as a reference on Ms. Dintaman's application. Do you remember that?

A. Yes.

Q. Now, being her reference, do you remember anybody from probation contacting you to ask you questions about it?

A. No.

Q. Well, you testified on direct that, um, that you had a conversation with Mr. Burke after the selection of Mr. Glenowicz?

A. Yes.

Q. And he made, and correct me if I'm wrong, um, a statement about how the decision had been made and that someone else makes that decision, correct?

A. I'm sorry, I couldn't hear you?

Q. Again, tell us what Mr. Burke said to you during that conversation, um, after Mr. Glenowicz was selected as a CPO?

A. Um --

MR. AMABILE: Your Honor, asked and answered.

THE COURT: No, overruled. He may have it.

1 A. My memory of it is that when I expressed my -- for
2 lack of a better word, "dismay" that Mr. Glenowicz had
3 been in the final selection, I believe Mr. Burke said to
4 me, "Well, that's somebody else's decision and
5 essentially that's just the way it is."

6 Q. Well, did -- since you were listed in the reference
7 of one of the people that applied for that job, did
8 anybody -- did that decision-maker contact you?

9 A. No.

10 Q. Well, you were the First Justice of that court,
11 correct?

12 A. No, I was -- of which court?

13 Q. For the interviews, you were the First --

14 A. I was the designee for the Superior Court. The
15 Superior Court doesn't have First Justices.

16 Q. But that is the court you sat in, correct?

17 A. That was one of the courts, yes, I sit in.

18 Q. And no one contacted you?

19 A. No.

20 Q. You were also asked a series of questions about
21 Mr. Glenowicz and the types of cases he worked on or the
22 types of cases that were heard in juvenile court. Do
23 you remember that?

24 A. Yes.

25 Q. Do you know what types of cases Mr. Glenowicz

1 supervised in juvenile court?

2 A. No, I don't.

3 Q. You were also asked, I believe by Mr. Amabile, if
4 you understood the interview process to be perfunctory.
5 Do you remember that?

6 A. Yes.

7 Q. Did you understand that your role in this was
8 perfunctory?

9 A. I didn't expect it was supposed to be.

10 Q. What did you expect your role to be?

11 A. I expected that we were conducting interviews to
12 determine who the best candidate would be for that
13 particular position and to make a recommendation or
14 recommendations based on that.

15 Q. Now, you were asked questions about a Mr. Hogan?

16 A. Yes.

17 Q. And you answered you understood he was
18 Ms. Dintaman's supervisor, correct?

19 A. Yes.

20 Q. Did he call you at all, did you speak to him about
21 her performance?

22 A. No.

23 Q. (Pause.) You were also asked a series of questions
24 about a Mr. Christopher Hoffman, correct?

25 A. Yes.

1 Q. Do you know what his relationship was to Mr. Burke?

2 A. I don't. Well, I mean I didn't at the time and --

3 MR. SINNIS: Objection. She learned after the
4 interview.

5 THE COURT: No, that's her answer, she didn't
6 at the time.

7 Q. Does he still work in probation?

8 MR. SINNIS: Objection.

9 THE COURT: Sustained.

10 Q. Judge Josephson, from your experience working in the
11 courts of the Commonwealth, is the job of an APO
12 different than the job of a PO or an ACPO?

13 A. Yes.

14 Q. And there's many different responsibilities,
15 correct?

16 A. Yes.

17 Q. And someone who's a good APO or a PO may not make a
18 good supervisor, correct?

19 A. I think that's fair.

20 Q. You were also asked about a political component to
21 judicial appointments. Do you remember that?

22 A. Yes.

23 Q. And you went through that process to become a
24 justice, correct?

25 A. Twice.

1 Q. When you went through that process, were you scored
2 and ranked?

3 MR. SINNIS: Objection.

4 THE COURT: No, I'm going to sustain that.
5 I mean in Massachusetts, as an indeed in the federal
6 system, the determination -- the nomination is made by a
7 constitutional officer, the Governor, and then it goes
8 before a constitutional body, in Massachusetts the
9 Executive Council. Those are all called out in the
10 Massachusetts Constitution.

11 So I'm -- so that got in without objection, but
12 how judicial officers are selected is not part and
13 parcel of this case. We can go into other roles, but
14 not that one.

15 Go ahead.

16 Q. You also testified that you knew Mr. Burke for many
17 years, correct?

18 A. Yes.

19 Q. Did you understand that he was the Deputy
20 Commissioner of Probation for the Western part of the
21 state?

22 A. Yeah, again I don't know what his specific title
23 was, but I knew he was in charge of Western
24 Massachusetts for probation.

25 Q. During your time on the bench, have you ever

1 contacted anybody of a higher rank than him in
2 probation?

3 MR. SINNIS: Objection, your Honor. Asked and
4 answered.

5 THE COURT: It is, but I'll let her answer
6 that "yes" or "no."

7 A. I don't -- I don't think I have. I don't -- I'm not
8 clear on where everybody is in the hierarchy of
9 probation.

10 THE COURT: Let's ask a more specific question
11 and this one I'll allow.

12 Have you ever had occasion to contact or interact
13 with anyone at the top echelons, however you conceive
14 it, of the Department of Probation about candidates,
15 hirings, promotions, have you, while you served as a
16 judge?

17 THE WITNESS: I don't think I have.

18 THE COURT: All right. That's her answer.

19 Q. Now, Judge Josephson, you also stated, just on
20 cross-examination, about a phone call you got from
21 Mr. Petrolati?

22 A. Yes.

23 Q. At the time you got that phone call and prior to
24 that, what was your relationship with Mr. Petrolati?

25 A. I had none.

1 Q. Had you ever spoken to him before?

2 A. No.

3 Q. Had he ever called you before?

4 A. No.

5 Q. And this phone call, when was it in relation to in
6 terms of the interviews?

7 A. It was -- the day before we were going to be
8 conducting these mass interviews of 70 people over the
9 course of two days, 18 judges sitting on a -- I want to
10 say 18 people -- 18 judges, but it may have been fewer,
11 but not fewer of these 70 candidates over the course of
12 a couple of days.

13 Q. And then again what was your role on that panel?

14 A. I was the chair of that committee.

15 Q. So therefore you ran the interview process?

16 A. I did.

17 Q. And you stated you didn't call him back, correct?

18 A. I did not.

19 Q. When did you call him back?

20 A. After we had conducted all the interviews and given
21 our recommendations or our selections.

22 Q. And did you speak to him then?

23 A. No.

24 Q. Did you ever speak to him on the phone or in person
25 about that subject?

1 A. No.

2 Q. Now, you were also asked questions about

3 Mr. Glenowicz.

4 A. Yes.

5 Q. Before the interview did you have the opportunity to
6 look through his resume?

7 A. Before?

8 Q. Before.

9 A. Oh, before the interview? Oh, yes. Yes.

10 Q. And was it customary for you to look through the
11 resumes and the applications?

12 A. Sure, yes.

13 Q. And of course you were part of the panel that asked
14 questions of him, correct?

15 A. That's correct.

16 Q. So you read the information on his application and
17 the answers he gave, correct?

18 A. Yes.

19 Q. And it was your determination he was not the most
20 qualified for that job?

21 MR. SINNIS: Objection.

22 THE COURT: Yeah, don't lead the witness.

23 Q. What was your determination after reviewing his
24 application, resume, and meeting with him during the
25 interview?

1 A. There were other candidates which were much more
2 qualified.

3 Q. And did you also consider their applications and
4 interview?

5 A. Yes.

6 MR. FISHER: Nothing further for this witness,
7 your Honor.

8 THE COURT: Nothing further for this witness,
9 Mr. Amabile?

10 MR. AMABILE: No, your Honor. Thank you.

11 THE COURT: Mr. Denner?

12 MR. DENNER: No sir.

13 THE COURT: Mr. Sinnis?

14 MR. SINNIS: Nothing further, your Honor.

15 THE COURT: You may step down. Thank you.

16 (Witness steps down.)

17 THE COURT: Call your next witness.

18 (**EXCERPT** ends.)
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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the foregoing record is a true and accurate transcription of my stenographic notes, of the aforementioned **EXCERPT**, before Judge William G. Young, on Friday, June 13, 2014, to the best of my skill and ability.

/s/ Richard H. Romanow 12-04-14

RICHARD H. ROMANOW Date